
SUBSTITUTE SENATE BILL 5425

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Environment, Energy & Water (originally sponsored by Senators Kohl-Welles, Jacobsen and Fraser)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to aerial application of pesticides to control
2 plant pests; amending RCW 17.24.007, 15.58.065, 17.24.171, and
3 43.06.010; adding new sections to chapter 17.24 RCW; and adding a
4 new section to chapter 15.58 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 17.24
7 RCW to read as follows:

8 The legislature finds that controlling and eradicating pests in
9 urban areas is a matter of statewide interest, including both to
10 the residents of urban areas in which pests are detected and to
11 the agricultural and other sectors of the state's economy that may
12 be affected by the spread of pests. Therefore all segments of the
13 interested public should have ample opportunity to be informed of
14 and to participate meaningfully in governmental programs for pest
15 detection, assessment of infestation threat, development of
16 alternatives to address the threat, and implementation of chosen
17 alternatives. Such information, notification, and participation are
18 important in ensuring the effectiveness of the program while

1 ensuring protection of public health and the public's trust and
2 confidence that the chosen alternatives will be effective while
3 posing the least risk to public health and the environment. Because
4 the aerial application of pesticides in densely populated urban
5 residential areas may expose a greater population, it is the
6 purpose of this act to direct the appropriate state and local
7 agencies to implement enhanced standards for public information,
8 notification, and participation in pest control activities
9 involving such aerial application of pesticides.

10 **Sec. 2.** RCW 17.24.007 and 2000 c 100 s 6 are each amended to read
11 as follows:

12 Unless the context clearly requires otherwise, the definitions
13 in this section apply throughout this chapter.

14 (1) "Department" means the state department of agriculture.

15 (2) "Director" means the director of the state department of
16 agriculture or the director's designee.

17 (3) "Quarantine" means a rule issued by the department that
18 prohibits or regulates the movement of articles, bees, plants, or
19 plant products from designated quarantine areas within or outside
20 the state to prevent the spread of disease, plant pathogens, or
21 pests to nonquarantine areas.

22 (4) "Plant pest" means a living stage of an insect, mite,
23 nematode, slug, snail, or protozoa, or other invertebrate animal,
24 bacteria, fungus, or parasitic plant, or their reproductive parts,
25 or viruses, or an organism similar to or allied with any of the
26 foregoing plant pests, including a genetically engineered
27 organism, or an infectious substance that can directly or
28 indirectly injure or cause disease or damage in plants or parts of
29 plants or in processed, manufactured, or other products of plants.

30 (5) "Plants and plant products" means trees, shrubs, vines,
31 forage, and cereal plants, and all other plants and plant parts,
32 including cuttings, grafts, scions, buds, fruit, vegetables,
33 roots, bulbs, seeds, wood, lumber, and all products made from the
34 plants and plant products.

35 (6) "Certificate" or "certificate of inspection" means an
36 official document certifying compliance with the requirements of
37 this chapter. The term "certificate" includes labels, rubber stamp

1 imprints, tags, permits, written statements, or a form of
2 inspection and certification document that accompanies the
3 movement of inspected and certified plant material and plant
4 products, or bees, bee hives, or beekeeping equipment.

5 (7) "Compliance agreement" means a written agreement between
6 the department and a person engaged in growing, handling, or
7 moving articles, plants, plant products, or bees, bee hives, or
8 beekeeping equipment regulated under this chapter, in which the
9 person agrees to comply with stipulated requirements.

10 (8) "Distribution" means the movement of a regulated article
11 from the property where it is grown or kept, to property that is
12 not contiguous to the property, regardless of the ownership of the
13 properties.

14 (9) "Genetically engineered organism" means an organism altered
15 or produced through genetic modification from a donor, vector, or
16 recipient organism using recombinant DNA techniques, excluding
17 those organisms covered by the food, drug and cosmetic act (21
18 U.S.C. Secs. 301-392).

19 (10) "Person" means a natural person, individual, firm,
20 partnership, corporation, company, society, or association, and
21 every officer, agent, or employee of any of these entities.

22 (11) "Sell" means to sell, to hold for sale, offer for sale,
23 handle, or to use as inducement for the sale of another article or
24 product.

25 (12) "Noxious weed" means a living stage, including, but not
26 limited to, seeds and reproductive parts, of a parasitic or other
27 plant of a kind that presents a threat to Washington agriculture
28 or environment.

29 (13) "Regulated article" means a plant or plant product, bees
30 or beekeeping equipment, noxious weed or other articles or
31 equipment capable of harboring or transporting plant or bee pests
32 or noxious weeds that is specifically addressed in rules or
33 quarantines adopted under this chapter.

34 (14) "Owner" means the person having legal ownership,
35 possession, or control over a regulated article covered by this
36 chapter including, but not limited to, the owner, shipper,
37 consignee, or their agent.

38 (15) "Nuisance" means a plant, or plant part, apiary, or

1 property found in a commercial area on which is found a pest,
2 pathogen, or disease that is a source of infestation to other
3 properties.

4 (16) "Bees" means adult insects, eggs, larvae, pupae, or other
5 immature stages of the species *Apis mellifera*.

6 (17) "Bee pests" means a mite, other parasite, or disease that
7 causes injury to bees and those honey bees generally recognized to
8 have undesirable behavioral characteristics such as or as found in
9 Africanized honey bees.

10 (18) "Biological control" means the use by humans of living
11 organisms to control or suppress undesirable animals and plants;
12 the action of parasites, predators, or pathogens on a host or prey
13 population to produce a lower general equilibrium than would
14 prevail in the absence of these agents.

15 (19) "Biological control agent" means a parasite, predator, or
16 pathogen intentionally released, by humans, into a target host or
17 prey population with the intent of causing population reduction of
18 that host or prey.

19 (20) "Emergency" means a situation where there is an imminent
20 danger of an infestation of plant pests or disease that seriously
21 threatens the state's agricultural or horticultural industries or
22 environment and that cannot be adequately addressed with normal
23 procedures or existing resources.

24 (21) "Large urban residential area" means that area lying
25 within the incorporated boundaries of a city with a population of
26 greater than one hundred thousand and the urban growth area
27 contiguous to the city, and in which residential uses are a
28 permitted or a conditional use.

29 **Sec. 3.** RCW 15.58.065 and 1989 c 380 s 5 are each amended to read
30 as follows:

31 (1) In submitting data required by this chapter, the applicant
32 may:

33 (a) Mark clearly any portions which in the applicant's opinion
34 are trade secrets or commercial or financial information; and

35 (b) Submit such marked material separately from other material
36 required to be submitted under this chapter.

37 (2) Except under section 4 of this act and notwithstanding any

1 other provision of this chapter or other law, the director shall
2 not make public information which in the director's judgment
3 should be privileged or confidential because it contains or
4 relates to trade secrets or commercial or financial information
5 except that, when necessary to carry out the provisions of this
6 chapter, information relating to unpublished formulas of products
7 acquired by authorization of this chapter may be revealed to any
8 state or federal agency consulted and may be revealed at a public
9 hearing or in findings of fact issued by the director when
10 necessary under this chapter.

11 (3) Except under section 4 of this act, if the director
12 proposes to release for inspection information which the applicant
13 or registrant believes to be protected from disclosure under
14 subsection (2) of this section, the director shall notify the
15 applicant or registrant in writing, by certified mail. The director
16 shall not thereafter make available for inspection such data until
17 thirty days after receipt of the notice by the applicant or
18 registrant. During this period, the applicant or registrant may
19 institute an action in the superior court of Thurston county for a
20 declaratory judgment as to whether such information is subject to
21 protection under subsection (2) of this section.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 15.58
23 RCW, to be codified between RCW 15.58.065 and 15.58.070, to read
24 as follows:

25 (1) When the director proposes to control a pest through the
26 aerial application of pesticides within a large urban residential
27 area as defined in RCW 17.24.007, the director shall consult with
28 appropriate public university personnel and federal, state, and
29 local health agencies concerning unpublished formulas of products
30 acquired by authorization of this chapter for the purpose of
31 obtaining an independent assessment of the possible human health
32 risks associated with the proposed use.

33 (2) The director shall reveal to consulted individuals the
34 confidential statement of formula for the purpose of assessing the
35 possible human health risks associated with the proposed pesticide
36 use by the department.

37 (3) Consulted individuals shall consider the confidential

1 statement of formula, the proposed pesticide use, the impact on
2 affected populations, and any other considerations that may bear
3 on public health in making an assessment of the possible human
4 health risks.

5 (4) The director shall make any independent assessment
6 available to the public except that the names, chemical abstract
7 service numbers, or other identifying characteristics or
8 percentages of inert ingredients in a pesticide, and any other
9 information marked as confidential by the registrant, shall not be
10 disclosed. Additionally, any information or documents used in
11 preparation of an independent assessment that pertain to the
12 confidential statement of formula and any protected trade secret
13 information shall not be disclosed to the public by any person.

14 (5) This section shall be in addition to and shall not limit
15 the authority of the director under any other provision of law to
16 release to the public information relating to pesticide formula,
17 ingredients, or other information.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 17.24
19 RCW to read as follows:

20 When surveys and other measures, including necessary laboratory
21 confirmation of species type, detect the presence within a large
22 urban residential area of a pest in such numbers that the aerial
23 application of pesticides may be considered as a measure to
24 control or eradicate the pest, the director shall provide public
25 notice of the survey results. The director shall choose from a
26 variety of methods reasonably calculated to provide notice to the
27 public, including, at a minimum, notifying public and private
28 groups with a known interest in the type of proposal being
29 considered. The notice shall describe the procedures used to
30 evaluate the magnitude of the risk of infestation and the
31 alternatives for control or eradication measures if such measures
32 are determined necessary. The director shall hold a public meeting
33 within the area to provide information and to receive comments
34 from the public on the survey results, extent of risk of
35 infestation, the need for control or eradication measures, and
36 recommendations for preferred measures. The director shall accept
37 and consider such comments for a period of thirty days from the

1 date the notice is provided, or a lesser period as the director
2 determines if immediate action is required to implement
3 eradication measures.

4 **Sec. 6.** RCW 17.24.171 and 1991 c 257 s 21 are each amended to read
5 as follows:

6 (1) If the director determines that there exists an imminent
7 danger of an infestation of plant pests or plant diseases that
8 seriously endangers the agricultural or horticultural industries
9 of the state, or that seriously threatens life, health, or
10 economic well-being, the director shall request the governor to
11 order emergency measures to control the pests or plant diseases
12 under RCW 43.06.010(~~((+14))~~) (13). The director's findings shall
13 contain an evaluation of the affect of the emergency measures on
14 public health. When the requested measures include the aerial
15 application of pesticides in a large urban residential area, the
16 findings shall also include a summary of the information relied
17 upon in determining the extent of the danger, the alternative
18 control measures considered and the recommended measures, and,
19 when applicable, the director's response to the public comments
20 received upon the notice under section 5 of this act.

21 (2) If an emergency is declared pursuant to RCW
22 43.06.010(~~((+14))~~) (13), the director may appoint a committee to
23 advise the governor through the director and to review emergency
24 measures necessary under the authority of RCW 43.06.010(~~((+14))~~)
25 (13) and this section and make subsequent recommendations to the
26 governor. The committee shall include representatives of the
27 agricultural and silvicultural industries, state and local
28 government, public health interests, technical service providers,
29 and environmental organizations. When the director proposes as an
30 emergency measure the aerial application of pesticides in a large
31 urban residential area, the director shall appoint such a
32 committee to provide advice to the governor. The committee shall
33 also include representatives of the local health jurisdiction as
34 well as the city or county government for the area, and
35 organizations representing residents of the area. The committee
36 formed as required before an emergency aerial application of
37 pesticides shall undertake such review expeditiously and provide

1 such information and recommendations within the time that the
2 governor directs.

3 (3) Upon the order of the governor of the use of emergency
4 measures, the director is authorized to implement the emergency
5 measures to prevent, control, or eradicate plant pests or plant
6 diseases that are the subject of the emergency order. Such
7 measures, after thorough evaluation of all other alternatives, may
8 include the aerial application of pesticides.

9 (4) Upon the order of the governor of the use of emergency
10 measures, the director is authorized to enter into agreements with
11 individuals or companies, or both, to accomplish the prevention,
12 control, or eradication of plant pests or plant diseases,
13 notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or
14 any other statute. The director shall adopt procedures for
15 notifying the community in the application area before each aerial
16 application of pesticides in a large urban residential area. The
17 procedures shall include notifying individuals who have requested
18 individual notice, and include notice to major employers and
19 institutional facilities, including but not limited to schools,
20 child care facilities, senior residential and day care facilities,
21 health care facilities, and community centers.

22 (5) The director shall continually evaluate the emergency
23 measures taken and report to the governor at intervals of not less
24 than ten days. When the emergency measures taken include the aerial
25 application of pesticides in a large urban residential area, the
26 local health jurisdiction, with support from the department of
27 health, shall monitor public health effects following the
28 implementation of the measures in such areas.

29 (6) The director shall immediately advise the governor if he or
30 she finds that the emergency no longer exists or if certain
31 emergency measures should be discontinued.

32 **Sec. 7.** RCW 43.06.010 and 1994 c 223 s 3 are each amended to read
33 as follows:

34 In addition to those prescribed by the Constitution, the
35 governor may exercise the powers and perform the duties prescribed
36 in this and the following sections:

1 (1) The governor shall supervise the conduct of all executive
2 and ministerial offices;

3 (2) The governor shall see that all offices are filled,
4 including as provided in RCW 42.12.070, and the duties thereof
5 performed, or in default thereof, apply such remedy as the law
6 allows; and if the remedy is imperfect, acquaint the legislature
7 therewith at its next session;

8 (3) The governor shall make the appointments and supply the
9 vacancies mentioned in this title;

10 (4) The governor is the sole official organ of communication
11 between the government of this state and the government of any
12 other state or territory, or of the United States;

13 (5) Whenever any suit or legal proceeding is pending against
14 this state, or which may affect the title of this state to any
15 property, or which may result in any claim against the state, the
16 governor may direct the attorney general to appear on behalf of
17 the state, and report the same to the governor, or to any grand
18 jury designated by the governor, or to the legislature when next
19 in session;

20 (6) The governor may require the attorney general or any
21 prosecuting attorney to inquire into the affairs or management of
22 any corporation existing under the laws of this state, or doing
23 business in this state, and report the same to the governor, or to
24 any grand jury designated by the governor, or to the legislature
25 when next in session;

26 (7) The governor may require the attorney general to aid any
27 prosecuting attorney in the discharge of the prosecutor's duties;

28 (8) The governor may offer rewards, not exceeding one thousand
29 dollars in each case, payable out of the state treasury, for
30 information leading to the apprehension of any person convicted of
31 a felony who has escaped from a state correctional institution or
32 for information leading to the arrest of any person who has
33 committed or is charged with the commission of a felony;

34 (9) The governor shall perform such duties respecting fugitives
35 from justice as are prescribed by law;

36 (10) The governor shall issue and transmit election
37 proclamations as prescribed by law;

1 (11) The governor may require any officer or board to make,
2 upon demand, special reports to the governor, in writing;

3 (12) The governor may, after finding that a public disorder,
4 disaster, energy emergency, or riot exists within this state or
5 any part thereof which affects life, health, property, or the
6 public peace, proclaim a state of emergency in the area affected,
7 and the powers granted the governor during a state of emergency
8 shall be effective only within the area described in the
9 proclamation;

10 (13) The governor may, after finding that there exists within
11 this state an imminent danger of infestation of plant pests as
12 defined in RCW 17.24.007 or plant diseases which seriously
13 endangers the agricultural, silvicultural, or horticultural
14 industries of the state of Washington, or which seriously
15 threatens life, health, or economic well-being, order emergency
16 measures to prevent or abate the infestation or disease situation,
17 which measures, after thorough evaluation of all other
18 alternatives, may include the aerial application of pesticides. The
19 governor shall not approve a proposed emergency measure that
20 includes the aerial application of pesticides in a large urban
21 residential area unless the governor determines that all other
22 alternatives are not feasible or likely to prevent or abate the
23 infestation or disease situation;

24 (14) On all compacts forwarded to the governor pursuant to RCW
25 9.46.360(6), the governor is authorized and empowered to execute
26 on behalf of the state compacts with federally recognized Indian
27 tribes in the state of Washington pursuant to the federal Indian
28 Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting
29 class III gaming, as defined in the Act, on Indian lands.

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